FARAD CONSTITUTION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6035/2004
Shri Vitthal Rukhamai Deosthan Sansthan, Pandharpur through its Registrar Shri Harinarayan Vishramji Gorle
...Versus...
Madhavrao Yadavrao Bhagat and another

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

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(Shri R.D. Murkute, Adv. for petitioner)
(Shri G.G. Bade, Adv. for respdt. No.1)
(Shri S.V. Ingole, Adv. for respdt. No.2)

CORAM:- A.B. CHAUDHARI, J.
DATED :- 21.06.2007.

This writ petition is pending in this Court for admission since December, 2004. On 7.6.2007, none appeared, hence it was adjourned to 14.6.2007. On 14.6.2007 on the request made on behalf of Advocate Shri Murkute for petitioner, it was adjourned to 21.6.2007. Today again a request is made for adjournment on behalf of Advocate Shri Murkute for petitioner.

Looking to the fact that the petition is being adjourned for the last two and half years, I do not think it is proper to adjourn the petition over and again. Advocate Shri S.V. Ingole appears for respondent No.2. The petition could have been dismissed for want of prosecution in normal

course, however, having gone through the entire petition and the accompanying documents, I find that in the interest of justice the petition deserves to be decided on merit.

It appears that the original tenant Radhabai on the suit field belonging to the petitioner - Public Trust has expired. In the meanwhile, due to dispute amongst the brothers, suit for partition in respect of suit land came to be filed in the Court of Civil Judge (J.D.), Darwha. A decree was passed in the suit, which was the subject matter of the first appeal and second appeal, which were decided. It appears that the petitioner – Trust was never made a party in those proceedings. Since the petitioner – Trust was never made a party in those proceedings and since the execution proceedings pursuant to the said decree in the suit for partition was being executed, Tahsildar issued a notice to the petitioner – Trust with recorded owner and that is how the petitioner – Trust came to know about the above mentioned civil proceedings. In that context, the petitioner - Trust on the basis of the judgment of the Hon'ble Supreme Court of India, reported in 1999 (1) Mh.L.J. , page 1 (Vijayabai and others...Versus...Shriram Tukaram and others) appears to have filed the instant writ petition and the ground is taken in the writ petition that since the tenancy cannot be inherited in respect of suit land belonging to public trust, the legal heirs of the original tenant could

not have obtained partition decree from the Civil Court.

In my opinion, the very filing of the present writ petition is ill-advised and the petitioner - Trust is not being correctly advised to take the correct steps according to law. If according to the petitioner – Trust, the tenancy cannot be inherited in view of the said Supreme Court Judgment, the petitioner - Trust ought to have taken steps to apply for exemption under Section 129 (b) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region), Act, 1958 or apply for eviction of the tenants under the relevant provisions of the Tenancy Act. The present petition cannot therefore be entertained but at the same time even now the Trust is entitled to take up the proceedings against the tenants as indicated by me herein before. The writ petition is thus disposed of. No order as to costs.

JUDGE

ssw